

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 04-0363P**

**Income Tax**

**For the Calendar Years 2000 & 2002**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the late penalty.

**STATEMENT OF FACTS**

The late penalty was assessed on the late payment and filing of amended income tax returns for the calendar years 2000 and 2002.

The taxpayer is an individual residing in Indiana.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer requests the late penalty be waived as the filing of the amended returns was late due to the lateness of the amended K-1s which were received from a Sub-S corporation the taxpayer has an interest in.

The Department points out that the corporation from which the K-1s came is owned by the taxpayer. Thus, the taxpayer is responsible for the late K-1s and fails to establish reasonable cause.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the

Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

**FINDING**

The taxpayer’s penalty protest is denied.